

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENTUCKY UTILITIES COMPANY

ALLEGED FAILURE TO COMPLY WITH
COMMISSION REGULATION 807 KAR 5:041,
SECTION 3(1)

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) CASE NO. 93-035
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O R D E R

After receiving an Electrical Utility Accident Investigation Report in which Commission staff alleged that Kentucky Utilities Company ("KU") had failed to comply with Commission regulations, the Commission ordered the utility to show cause why it should not be penalized for its alleged failure. After a hearing in this matter, the Commission found that KU willfully violated Commission Regulation 807 KAR 5:041, Section 3(1), and assessed a penalty against KU. KU subsequently applied for reconsideration. The Commission granted the application. By this Order, the Commission affirms its earlier Order.

At issue is whether KU Line Supervisor John G. McQueen willfully failed to comply with the National Electrical Safety Code ("NESC") and hence Commission Regulation 807 KAR 5:041, Section 3(1). KU contends that McQueen's actions were merely "ordinary negligence" and do not constitute "'willful' behavior." Motion For Reconsideration at 2. Accordingly, KU argues, the assessment of a penalty is not permissible.

For civil and administrative proceedings, "willful conduct is most often defined simply as that which is intentional, rather than inadvertent or accidental." Hager v. D. of C. Dept. of Cong. & Reg. Affairs, 475 A.2d 367, 368 (D.C.App. 1984). For example, in Woods v. Corsey, 200 P.2d 208 (Cal.App. 1948), which involved a civil violation of the Emergency Price Control Act, the California Court of Appeals found that a willful violation was "one which is intentional, knowing, voluntary, deliberate or obstinate, although it may be neither malevolent nor with the purpose to violate the law." Id. at 211. Similarly, in Nuger v. State Insurance Commissioner, 207 A.2d 619 (Md. 1965), which involved an appeal of an administrative agency's revocation of two insurance agents' licenses for willfully violating insurance statutes, the Maryland Court of Appeals declared "willful violation" to mean "an intentional act of omission or commission." Id. at 625.

In Oldham v. Kubinski, 185 N.E.2d 270 (Ill.App. 1962), an employee of a contractor brought an action against a building demolition subcontractor for injuries sustained in a fall from the subcontractor's loader bucket which had been used to raise the employee above a floor to break the coupling of a pipe attached to a beam of the building. The employee alleged that the subcontractor had willfully violated the Illinois Structural Work Act which governed the placement and operation of scaffolding and hoisting equipment. Affirming the trial court's finding of a willful violation, the Illinois Court of Appeals stated:

'Willful violations' of the Act or 'willful failure to comply with any of its provisions' means 'knowing' violation or 'knowing failure to comply'; to constitute a willful violation it is not necessary that there should have been a reckless disregard of its provisions. . . .

Id. at 280.

In Kentucky, "[t]he word 'willful' in its general acceptance means intentionally, not accidentally nor involuntarily." Muncy v. Commonwealth, 265 Ky. 730, 736, 97 S.W.2d 606, 609, (1936). Proof of ill will is not a requisite element of willfulness. Louisville & N. R. Co. v. George, 279 Ky. 24, 29, 129 S.W.2d 986, 989 (1939). Consequently, no evidence of ill will, evil intent, or malice is necessary to prove that an act was willfully performed.

In Huddleston v. Hughes, Ky.App., 843 S.W.2d 901 (1992), the Court of Appeals interpreted the term "willful" as used in the Kentucky Recreational Use Statute (KRS 411.190). After reviewing various usages of the term, the Court concluded that the term "willful" does not "necessarily and solely entail an 'intention to do wrong and inflict an injury,'" but may also include conduct which reflects an "indifference to . . . [its] natural consequences." Id. at 906.

McQueen is an experienced first line supervisor who knows and understands NESC requirements. He allowed testing equipment in the work area which had a voltage rating of less than 600 volts. The transformer in question was clearly marked as having a voltage exceeding 2400 volts. McQueen in fact unlocked the transformer door on which the voltage marker is located. NESC Section 421A5


required McQueen to prohibit the use of tools that are not suited to the work at hand. McQueen neither checked the transformer's voltage nor the testing equipment's voltage rating to ensure the equipment's adequacy. He did not do so. Ignoring clearly marked signs, he permitted Taylor to test the transformer with inadequate equipment. His actions were intentional and show an indifference to their natural consequences.

IT IS THEREFORE ORDERED that:

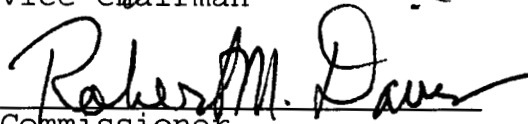
1. The Commission's Order of September 16, 1993 is affirmed.
2. A penalty of \$1,750 is assessed against KU for its willful failure to comply with Commission Regulation 807 KAR 5:041, Section 3(1).
3. KU shall pay the assessed penalty within 20 days of the date of this Order by certified check or money order made payable to "Treasurer, Commonwealth of Kentucky." Said check or money order shall be mailed or delivered to the Office of General Counsel, Public Service Commission of Kentucky, 730 Schenkel Lane, P.O. Box 615, Frankfort, Kentucky 40602.

Done at Frankfort, Kentucky, this 2nd day of April, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director